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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOHN MERZWEILER,

Plaintiff and Appellant,

v.

JANET HOULIHAN et al.,

Defendants and Respondents.

G052806

(Super. Ct. No. 30-2014-00714677)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed in part and reversed in part.

John Merzweiler, in pro. per., for Plaintiff and Appellant.

Declues, Burkett & Thompson, Cary K. Quan and Gregory A. Wille for Defendants and Respondents.

John Merzweiler appeals from a judgment of dismissal after an order sustaining a demurrer. Merzweiler contends his suspension from Golden West College (GWC) violated his right to a fair hearing under both common law and as statutorily required by section 66017 of the Education Code.<sup>1</sup> He also complains the total and indefinite restriction of the college's locker room facilities to a private swim club violates section 82537, which expressly precludes giving a monopoly over community college facilities to a private group. Finding some of his contentions have merit, we affirm in part and reverse in part.

### FACTS

Merzweiler was enrolled as a student for the 2013 summer and fall semesters and was a student at GWC off and on from 1972. Merzweiler had registered for a student computer lab class in the summer semester, and both an advanced tap dance class and another computer lab class in the fall semester. He paid a total of \$82 for the two fall classes, which included a \$17 college "service charge" and a \$19 "health fee."

For many years, Merzweiler used the men's locker room adjacent to GWC's pool facilities to shower and generally attend to personal hygiene. However, after the spring 2013 semester, the college instituted a policy of locking out all students from the locker rooms adjacent to the pool so that a private swim club could have exclusive full-time use of those two locker rooms.

On June 19, 2013, Merzweiler appeared before the Coast Community College District Board (the Board) at a public meeting. Merzweiler informed the Board of his view that the Coast Community College District (the District) was exercising an unlawful monopoly over the men's locker room at GWC. On July 1, Merzweiler

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<sup>1</sup> All further statutory references are to the Education Code, unless otherwise indicated.

e-mailed Janet Houlihan, the college's dean of students, a copy of section 82537, subdivision (c). On or about July 17, 2013, Merzweiler again appeared before the Board and read section 82537, subdivision (c).

On August 27, 2013, Merzweiler submitted an administrative complaint, called, "Claim for Damages." The basis of the damage claim was the exclusion of students from the locker room facilities. Merzweiler alleged that permitting exclusive use of the facilities by the GWC swim and water polo teams constituted an impermissible monopoly. The District identified this complaint as a government tort claim and rejected it on November 7, 2013.

On September 3, 2013, Houlihan sent Merzweiler a letter stating she had received two reports of disruptive behavior. Houlihan indicated several attempts had been made to meet with Merzweiler, but he did not respond. He also failed to show up at a scheduled meeting with her. Because of this, she indicated she was imposing a short-term suspension prohibiting Merzweiler "from attending classes or entering onto any District [p]roperty until you meet with me to discuss the incidents."

Houlihan sent a second suspension letter to Merzweiler on September 4, 2013. The letter began: "Based on numerous concerns expressed regarding your behavior on campus, and after multiple discussions with you in my office where you displayed anger and disruptive behavior, you are hereby immediately suspended from [GWC] and the [District]." The letter then set forth the following seven allegations of misconduct: (1) Section 3.32 Disruptive Behavior; (2) Section 3.34 Failure to Comply or Identify; (3) Section 3.39 Continued Misconduct or Repeat Violation; (4) Section 3.43 Unreasonable Demands; (5) Section 3.47 Unauthorized Use of Property or Services;

(6) Section 3.49 Violation of Health & Safety Regulations; and (7) Section 3.51 Violation of Law.<sup>2</sup> Each allegation was followed by generic text explaining each violation, but no specific conduct by Merzweiler was described. The letter advised Merzweiler that if he was “found on any [the District’s] college campus[es] or [the District’s] property without prior written approval,” he would “be subject to arrest for trespassing.”

The letter concluded by citing “Section 4.5 Mental Health Clearance” and advised Merzweiler that to be readmitted he must schedule an appointment with Houlihan, and he must be escorted to the meeting by public safety staff. At the meeting he “must furnish evidence of a mental health clearance from a California licensed mental health professional, containing a statement attesting that [he is] capable of controlling [his] anger and hostility in a college environment.” The letter also indicated the “mental health clearance will need to demonstrate [his] satisfactory progress in coping with [his] anger management issues.” The letter did not provide any explanation as to the nature of the perceived anger and/or hostility issues.

Merzweiler subsequently submitted a letter from clinical psychologist, Mary G. Madrigal, Ph.D. In the letter, Madrigal verified Merzweiler was currently under her professional care and had been since May 18, 2013. She had conducted a psychological evaluation and anger assessment. Merzweiler had “never demonstrated any anger, impulsiveness, disrespect, or unpredictable behavior in [her] presence.” She reported, “[Merzweiler had] always presented himself as respectful, compliant, articulate, and methodical in his responses and ability to process. He [was] always open to feedback and self exploration.” She opined Merzweiler did not pose a threat to himself or the community. She conceded he was very assertive, but clearly did not demonstrate any threat to society or others. She also opined Merzweiler was “willing to comply with the

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<sup>2</sup> The letter indicated a copy of the District’s Student Code of Conduct was attached, but it is not part of our record. We presume the cited sections are from the Student Code of Conduct.

rules and regulations that are required to attend any of the [the District's] college campuses.”

In support of her opinion, Madrigal indicated Merzweiler was a decorated military veteran, received many commendations while in the military, and received an honorable discharge. No incidents were reported or noted while he was in the military.

She further indicated Merzweiler is and has been a long-standing student at GWC since 1972. He also attended several other schools in the District over the years. He had demonstrated an ability to comply with policies, procedures, regulations, and the standards of the school as evidenced by his attendance since 1972 without disciplinary actions needed. Madrigal concluded by advising that should there be any questions or need for additional information she could be reached by telephone or the e-mail she provided.

Meanwhile, the District unsuccessfully sought a restraining order against Merzweiler in superior court. (*Coast Community College District v. Merzweiler* (Super. Ct. Orange County, 2013 No. 30-2013-00674136.) Code of Civil Procedure section 527.8 permits employers in control of workplaces to obtain restraining orders to prevent workplace violence. The trial court ruled the only incident that might have arguably justified a restraining order was when a coach attempted to confiscate Merzweiler's bicycle, which was parked in the locker room while Merzweiler was taking a shower. The court concluded both Merzweiler and the coach bore some responsibility for the incident and denied the petition.

On October 4, 2013, the District informed Merzweiler that it was not satisfied Madrigal's letter constituted an adequate and fully informed mental health clearance, and indicated the suspension remained in effect until these matters were resolved with Madrigal. No details were given as to why the District was dissatisfied with Madrigal's letter. The District also advised Merzweiler that consent for him to enter

campus was withdrawn and should he re-enter the District's facilities, he may be charged with a misdemeanor pursuant to Penal Code section 626.4, subdivision (d).

Houlihan sent Merzweiler another suspension letter, dated October 21, 2013, indicating her intention to impose a two-year suspension. The letter advised Merzweiler he had the right to provide a written or verbal rebuttal no later than 9:00 a.m. on October 25, 2013. This letter set forth 18 "grounds" for suspension. Unlike the September 4 letter that failed to cite any specific conduct by Merzweiler, this letter alleged particular conduct.

On April 7, 2014, Merzweiler, in propria persona, filed this action designated as a "petition for writ of mandate." (Capitalization omitted.) He sought "full-reinstatement as a student, a clean [e]ducational record, and all rights garnered to all students in the Coast Community College District." He also sought the return of \$82 in fees paid for the fall semester, "exemplary damages," and an order prohibiting "Respondents or Respondents' subordinates" from physically or administratively "stalking" him. Merzweiler alleged he was suspended without the benefit of a hearing pursuant to section 66017. Merzweiler asserted he had exhausted his administrative remedies because he had been denied a hearing pursuant to section 66017.

Two rounds of demurrers followed. On November 13, 2014, the court sustained the first demurrer on the ground Merzweiler failed to allege sufficient facts regarding the exhaustion of his administrative remedies. Merzweiler was granted leave to amend, pursuant to Code of Civil Procedure section 472a, subdivision (c), to allege facts showing he exhausted his administrative remedies. On January 9, 2015, Merzweiler filed the first amended petition and added Wes Bryan, Jon Arnold, and Rob Bachmann as parties.

Houlihan and the District filed a second demurrer, and the newly named defendants filed a separate demurrer. On April 16, 2015, the court sustained the demurrer of Houlihan and the District as to the "writ of mandate seeking reinstatement

and a clean educational record” without leave to amend. The court granted Merzweiler leave to amend his claim for violations of section 82537, subdivision (c).

On May 18, 2015, Merzweiler filed a second amended petition seeking return of fees paid for both the fall and summer semesters, and open access of the men’s locker room to all cash paying students and the handicapped. He again alleged there was no administrative hearing held. On June 17, 2015, the District, Houlihan, Bryan, Arnold, and Bachmann filed a demurrer. On October 15, 2015, the court treated the demurrer filed by Bryan, Arnold, and Bachmann as a motion to strike and granted the motion. Again citing Merzweiler’s failure to exhaust administrative remedies, the court also sustained without leave to amend the demurrer filed by Houlihan and the District.<sup>3</sup> Merzweiler filed a timely notice of appeal.

#### DISCUSSION

A student’s right to procedural due process is supported by the United States Constitution and the Constitution of the State of California, as well as statutory and case law. Both the federal and state Constitutions compel the government to afford persons due process before depriving them of any property interest. (U.S. Const., 14th Amend. [“nor shall any State deprive any person of life, liberty, or property, without due process of law”]; Cal. Const., art. I, § 7, subd. (a) [“A person may not be deprived of life, liberty, or property without due process of law”].)

The essence of due process is the requirement that “a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.” (Mathews v. Eldridge (1976) 424 U.S. 319, 348.) The opportunity to be heard must be afforded “at a meaningful time and in a meaningful manner.” (Armstrong v. Manzo

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<sup>3</sup> We deem the order sustaining the demurrer without leave to amend to incorporate a judgment of dismissal. (See *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 920 [“an appellate court may deem an order sustaining a demurrer to incorporate a judgment of dismissal”].)

(1965) 380 U.S. 545, 552.) To ensure the opportunity to be heard is meaningful, the United States Supreme Court and other courts have identified some aspects of due process as irreducible minimums. For example, whenever “due process requires a hearing, the adjudicator must be impartial.” (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025, *Goldberg v. Kelly* (1970) 397 U.S. 254, 267.)

Statutes consistent with these constitutional mandates have been enacted to guide community college suspensions. Section 76030 gives authority to community colleges to suspend students for “good cause.” Good cause is separately defined in another statute, section 76033, and includes things like possession on campus of controlled substances or assault and battery. Section 76030 specifically refers to section 66017 for the level of procedure to which a student is entitled. Section 66017 allows for summary suspensions up to 10 days, but requires a prompt hearing by a “campus body” for anything longer.

Section 66017 provides, “The respective governing boards of the California Community Colleges, the California State University, or the University of California shall adopt appropriate procedures and designate appropriate persons to take disciplinary action against any student, member of the faculty, member of the support staff, or member of the administration of the community college, state college, or state university *who, after a prompt hearing by a campus body*, has been found to have willfully disrupted the orderly operation of the campus. Nothing in this section shall be construed to prohibit, where an immediate suspension is required in order to protect lives or property and to ensure the maintenance of order, interim suspension pending a hearing; provided that a reasonable opportunity be afforded the suspended person for a hearing within 10 days. The disciplinary action may include, but need not be limited to, suspension, dismissal, or expulsion. Sections 89538 to 89540, inclusive, shall be applicable to any state university or college employee dismissed pursuant to this section.” (Italics added.)

A body of California case law has developed relating to procedural due process in the academic setting and student discipline. In *Perlman v. Shasta Joint Jr. College Dist. Bd. of Trustees* (1970) 9 Cal.App.3d 873, 879, 882 (*Perlman*), the court held a community college student could be validly suspended for three days based on an informal discussion with the dean, but could not be validly expelled where the expelling body was biased and prejudiced against student. In *Thompson v. Sacramento City Unified School Dist.* (2003) 107 Cal.App.4th 1352, 1364 (*Thompson*), the court observed a student assailant of student plaintiff was entitled to due process before any suspension, including adjudication from an administrator who “must make a fair and unbiased attempt to determine what happened and if it justifies suspension.” And in *Doe v. University of Southern California* (2016) 246 Cal.App.4th 221, 225, 244 (*Doe v. USC*), in a notice of discipline, the failure to specify “factual basis” for allegations against a student based on an incident at a fraternity party deprived the student of due process in disciplinary proceedings arising out of the incident. The court held that to be meaningful, notice must include information about the basis of the accusation and not just a list of sections from the Student Code of Conduct.

Federal courts have also addressed questions of procedural due process in the academic setting. High school students suspended up to 10 days in connection with demonstrations are entitled to “rudimentary” due process consisting of (at least) notice of the charges and an explanation of the evidence against them, and longer suspensions might require more “formal” procedures. (*Goss v. Lopez* (1975) 419 U.S. 565, 584 (*Goss*).) In *Dixon v. Alabama State Board of Education* (5th Cir. 1961) 294 F.2d 150, 158 (*Dixon*), the court held students could not be summarily expelled for a lunch counter sit-in without notice of the grounds for expulsion and a fair hearing. The court observed that under the facts before the court “something more than an informal interview with an administrative authority of the college” was needed for proper due process. (*Ibid.*)

The consistent theme in all these cases is that a student has a right to procedural due process, though the level of due process that must be afforded is commensurate with the context. The case before us now adds a new dimension to this body of common law. In addition to whatever due process protections community college students may have as a matter of common or constitutional law, the Legislature has specified they must be afforded a prompt hearing before a “campus body” prior to any suspension longer than 10 days. It is clear Merzweiler’s two-year suspension imposed by Houlihan’s October 21 letter runs afoul of *both* the common law due process protections described in the case law and the statutory protections afforded by section 66017.

#### *Inadequate Notice*

The letters of September 3, September 4, and October 4 show that suspensions were imposed on those dates without any articulation of the factual basis for Merzweiler’s alleged misconduct. A factual basis only came in the October 21 letter, which set forth 18 “grounds” for suspension. This letter announced the intention to impose a two-year suspension and advised Merzweiler he had the right to provide a written or verbal rebuttal no later than 9:00 a.m. on October 25, 2013. This letter set forth 18 “grounds” for suspension and bears a strong resemblance to list of student code of violations held to be insufficient in the *Doe v. USC* 246 Cal.App.4th 221 case.

We note also that a previous letter on October 4 from the president, invoking Penal Code section 626.4, runs afoul of both *Doe v. USC* and the high court’s decision in *Braxton v. Municipal Court for San Francisco Judicial Dist.* (1973) 10 Cal.3d 138 (*Braxton*). The October letter only makes reference to vague intimations of “disruption” without giving the factual basis for its conclusions. In *Braxton*, the court held that invocation of disruption, without facts showing some other law had been violated, was unconstitutionally vague. (*Braxton, supra*, 10 Cal.3d at p. 144 [“the statute,

if literally applied, would succumb to constitutional attack both because of First Amendment overbreadth and vagueness”].)

### *No Hearing*

In the present case, Merzweiler was never afforded any sort of hearing regarding the alleged grounds to suspend him, a fact the college tacitly admits in its briefing. The most he was given was an opportunity to meet and confer with Houlihan. The lack of an opportunity for a hearing stands in contravention of the due process envisioned in every case we have cited on student discipline, but particularly *Goss* and *Dixon*, where there were suspensions or expulsions without any hearing. (*Goss, supra*, 419 U.S. at p. 567; *Dixon, supra*, 294 F.2d at p. 151.) *Perlman* is also significant in this regard because, while in *Perlman* the student did receive a hearing on his expulsion, it was in front of a biased and prejudiced board whose members had already made up their minds to expel the student. That lack of a neutral body to hear the student’s case rendered the process invalid. (See *Perlman, supra*, 9 Cal.App.3d at pp. 882-883.)

We need not decide whether a “campus body” must necessarily consist of more than one person, or whether a college might delegate the authority to consider a suspension to a given administrator acting as a one-person “campus body.” (Cf. *Dixon, supra*, 294 F.2d at p. 159 [suggesting proper hearing could have been heard by the “Board, or at least to an administrative official of the college”].) Regardless of whether one person can be a “campus body” under section 66017, it is clear that to comport with due process that “body” must be unbiased. (See *Thompson, supra*, 107 Cal.App.4th at p. 1364.) The body making the decision on student discipline must make a fair and unbiased attempt to determine what happened and what, if anything, is an appropriate consequence. The body cannot consist of a single individual who has evidenced that he or she has pre-determined the facts and the consequence. This record demonstrates Houlihan clearly had her mind made up on the facts and the appropriate consequence from the beginning. (See *Perlman, supra*, 9 Cal.App.3d at p. 883 [board had already

made up its mind to expel student]; accord, *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1016 [city councilmember who already voiced strong opposition to planning application could not sit on body adjudicating application].)

### *Exhaustion of Remedies*

GWC argues Merzweiler forfeited his right to a hearing under section 66017, by failing to exhaust his administrative remedies. In particular, GWC points to Houlihan's September 3, 2013, letter, which GWC asserts shows Merzweiler declined to give the college's "procedures a chance."<sup>4</sup> There are three reasons why we reject this claim.

First, being invited to come in for a chat with an administrator when a long suspension or expulsion is contemplated for misconduct cannot be reasonably characterized as any sort of administrative remedy. In *Dixon*, for example, the appellate court observed that in the case of expulsion, a mere "informal interview with an administrative authority of the college" was insufficient to afford due process. (*Dixon, supra*, 294 F.2d at p. 158.) We note here that in the community college context, a *two-year* suspension is sufficiently close to a full expulsion (students typically graduate from community colleges in a two-year period) and the offer to meet with Houlihan as set forth in the letter of September 3 could hardly be deemed sufficient either.

The letter of October 21 was similarly deficient. While the letter alluded to an unarticulated section 6.2 in GWC's Student Code of Conduct allowing a rebuttal of the charges, the lack of adequate notice of the alleged misconduct and the time constraints imposed by the college rendered any such opportunity meaningless. The letter expressly gave Merzweiler only one day, or possibly two, to prepare a written rebuttal to GWC's lengthy list of student code violations. Such a short time period for rebuttal cannot be remotely construed as fair play.

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<sup>4</sup> GWC gives a date of November 3, 2013, for the letter, but the record clearly shows the letter was dated September 3, 2013.

Second, this case fits the relatively rare “futility” exception to the doctrine of administrative remedies. On this record it is clear GWC’s administration already had its mind made up before imposing the two-year suspension on Merzweiler on October 21. (See *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1313 [futility exception applies “only if the party invoking it can positively state that the administrative agency has declared what its ruling will be in a particular case”].)

Perhaps the most telling fact in regard to futility is GWC’s president’s response to the letter from Merzweiler’s psychologist of October 4. That letter rejected the psychologist’s evaluation of Merzweiler without stating any reason. It simply stated, “[W]e are not satisfied . . . Madrigal’s letter constitutes an adequate and fully informed mental health clearance.”

And third, on this record, we actually cannot say Merzweiler had any administrative remedies to exhaust. While GWC’s letters make reference to various provisions of a Code of Student Conduct (e.g., the allusion to rule 6.2 in the letter of October 21), we do not see where GWC ever asked the trial court to take judicial notice of a set of administrative rules that, for sake of argument, might have made an informal meet-and-confer with the accusing administrator a *prerequisite* to the statutorily guaranteed hearing in front of a neutral “body” under section 66017. (See *Thompson*, *supra*, 107 Cal.App.4th at p. 1364 [appropriate procedures for suspension must precede actual imposition of suspension].)

On the record before us, it is clear GWC’s suspension of Merzweiler cannot be sustained. Merzweiler therefore can bring an administrative mandate action to contest his suspension. (See *Goldberg v. Regents of the University of California* (1967) 248 Cal.App.2d 867, 873, fn. 6 [suspensions are on students’ permanent academic record and refute any contentions regarding mootness].)

### *Merzweiler's Monopoly Claim*

Merzweiler also complains the total and indefinite restriction of GWC's locker room facilities to a private swim club violates section 82537, which expressly precludes giving a monopoly over community college facilities to a private group. He is right.

Ever since 1911, California law has given school boards authority to allow private groups the use of school facilities for ““public, literary, scientific, recreational or educational meetings.”” (*McClure v. Board of Education* (1918) 38 Cal.App. 500, 502, citing former Pol. Code, § 1617, added by Stats. 1911, ch. 703, § 1, p. 1363.) But there have always been limitations. It is well established such use ““shall not be inconsistent with the use of said buildings or grounds for school purposes nor interfere with the regular conduct of school work.”” (*Id.* at p. 503.) A few years later, the Legislature enacted the Civic Center Act (the Act), which established a civic center at every public school where ““citizens . . . may engage in supervised recreational activities.”” (*Id.* at p. 501; see also §§ 38131 & 38133.) Section 38133, subdivision (c), provides school districts managing the facilities under the Act must promulgate rules to provide that use is “not inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of schoolwork.”

In 1976, the Legislature created a similar version of the Act to apply specifically to community colleges. Section 82537 is simply the community college version of sections 38131 and 38133. It provides, in relevant part, “The governing board of any community college district may grant the use of college facilities or grounds for public, literary, scientific, recreational, educational, or public agency meetings, or for the discussion of matters of general or public interest upon terms and conditions which the board deems proper, and subject to the limitations, requirements, and restrictions set forth in this article.” (§ 82537, subd. (b).) Similar to the Act, there are limitations on usage: (1) “No use shall be granted in a manner that constitutes a monopoly for the benefit of

any person or organization[;]” and (2) “The use of any community college facility . . . is subject to reasonable rules and regulations as the governing board of the district prescribes, and shall not interfere with the use and occupancy of the community college facilities and grounds, as is required for the purposes of the community colleges of the state.” (§ 82537, subds. (c) & (d).)

While section 82537 has never been the object of appellate scrutiny, the Act has engendered some case law, though most of it has been centered on the use of high school auditoriums for meetings. (*Johnson v. Huntington Beach Union High Sch. Dist.* (1977) 68 Cal.App.3d 1 [exclusion of after-school Bible study club]; *Dunbar v. Governing Board* (1969) 275 Cal.App.2d 14 [exclusion of Communist Party speaker invited to debate]). But, at least one case, *McClure*, has been the focus of use of school facilities for “recreational” purposes, arguably similar to GWC’s use of locker rooms and adjacent pool facilities in the case before us.

In *McClure*, a school board decided to allow the local high school building to be used for “a social dance.” (*McClure, supra*, 38 Cal.App. at pp. 500-501.) A group of local residents apparently were unhappy with the use of the school’s facilities for what they perceived as a morally questionable activity and brought suit to prevent that use. (*Id.* at p. 508.) In affirming the trial court’s dismissal of the objectors’ suit, much of the opinion was taken up with establishing that the word “recreational” in the statute could, indeed, include “terpsichorean” activity. (*Id.* at pp. 501-502.)<sup>5</sup>

But there were words of warning in *McClure* about granting too much in the way of exclusive use of the facility to a private group: “However, the schoolhouse, whether in the urban or rural district, must, of course, be used for a public purpose, and

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<sup>5</sup> In that regard, the appellate court hastened to assure its readers that there was nothing necessarily lascivious about dancing, so the school board had the authority to allow its auditorium to be the used for a private dance. (See *McClure, supra*, 38 Cal.App. at p. 507.)

that purpose must have some relation to the educational or recreational needs of the community. It is manifest, though, that within the limits of said statutory provisions there is room for the exercise of a wise discretion on the part of the board of education. [¶] It is equally *plain that the board would have no authority to grant an exclusive privilege to any of the citizens to use said building.*” (*McClure, supra*, 38 Cal.App. at p. 504, italics added.)

In the present case, we conclude the trial court erred in sustaining the demurrer on the monopoly issue for two distinct reasons. First, to return again to the standard of review on demurrers, there are no facts alleged, or any which a court could take judicial notice of, that contradict Merzweiler’s allegation a private swim club was granted exclusive use for an indefinite period. Second, section 82537, subdivision (d), is clear that any allowance of college facilities for recreational or other specified purposes “shall not interfere with the use and occupancy of the community college facilities and grounds, *as is required for the purposes of the community colleges of the state.*” (Italics added.) That is, any use allowed under the statutory scheme cannot interfere with the *normal* academic business of GWC.

And yet that is precisely what Merzweiler has alleged here. For the fall semester he was duly enrolled in an advanced tap dancing class held in the “recreational building.” It is reasonable to conclude this sort of physical activity will result in some students perspiring. But students enrolled in that class were barred from use of the college’s shower facilities because those amenities had been monopolized by a private club.

#### *Expungement, Tuition Reimbursement, Order Prohibiting Stalking*

Merzweiler also sought an expungement of his student record of the suspension. The request is obviously contingent on the outcome of the hearing before a neutral body that has yet to happen, so it remains viable at this time. He also sought the return of \$82 in forfeited fees and tuition for the fall 2013 semester as a result of the

improper suspension. On remand Merzweiler should be allowed to establish his claim for return of the fall 2013 fees. Lastly, at this stage of the proceedings and based on the record before us, Merzweiler should be allowed to pursue his stalking claim.

*Houlihan, Bryan, Arnold, and Bachmann as Parties*

Merzweiler has shown no basis for holding individual board members or Houlihan personally liable. His claim is against GWC itself and the District for violation of his due process rights and for his exclusion from facilities that would normally be available to duly enrolled students.

#### DISPOSITION

The judgment is reversed except to the degree it pertains to the individual defendants (Houlihan, Bryan, Arnold, and Bachmann). In the interests of justice, all parties will bear their own costs on appeal.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.